the loan is a mortgage transaction described in § 226.32(a); and

(ii) Under the terms of the loan—

(A) The penalty will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(C) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

(3) *Escrows*—(i) *Failure to escrow for property taxes and insurance.* Except as provided in paragraph (b)(3)(ii) of this section, a creditor may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.

(ii) *Exemptions for loans secured by shares in a cooperative and for certain condominium units*—(A) Escrow accounts need not be established for loans secured by shares in a cooperative; and

(B) Insurance premiums described in paragraph (b)(3)(i) of this section need not be included in escrow accounts for loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.

(iii) *Cancellation.* A creditor or servicer may permit a consumer to cancel the escrow account required in paragraph (b)(3)(i) of this section only in response to a consumer's dated written request to cancel the escrow account that is received no earlier than 365 days after consummation.

(iv) *Definition of escrow account.* For purposes of this section, "escrow account" shall have the same meaning as in 24 CFR 3500.17(b) as amended.

(v) *"Jumbo" loans.* For purposes of this § 226.35(b)(3), for a transaction with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac, the coverage threshold set forth in paragraph (a)(1) of this section for loans secured by a first lien on a dwelling shall be 2.5 or more percentage points greater than the applicable average prime offer rate.

(4) *Evasion; open-end credit.* In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.

[Reg. Z, 73 FR 44603, July 30, 2008, as amended at 76 FR 11324, Mar. 2, 2011]

§ 226.36 Prohibited acts or practices in connection with credit secured by a dwelling.

(a) *Loan originator and mortgage broker defined*—(1) *Loan originator.* For purposes of this section, the term "loan originator" means with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term "loan originator" includes an employee of the creditor if the employee meets this definition. The term "loan originator" includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a *bona fide* warehouse line of credit, or out of deposits held by the creditor.

(2) *Mortgage broker.* For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.

(b) [Reserved]

(c) *Servicing practices.* (1) In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall—

(i) Fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, or except as provided in paragraph (c)(2) of this section;

(ii) Impose on the consumer any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period; or

(iii) Fail to provide, within a reasonable time after receiving a request from the consumer or any person acting on behalf of the consumer, an accurate statement of the total outstanding balance that would be required to satisfy the consumer's obligation in full as of a specified date.

(2) If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(3) For purposes of this paragraph (c), the terms ''servicer'' and ''servicing'' have the same meanings as provided in 24 CFR 3500.2(b), as amended.

(d) *Prohibited payments to loan originators*—(1) *Payments based on transaction terms or conditions.* (i) In connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions.

(ii) For purposes of this paragraph (d)(1), the amount of credit extended is not deemed to be a transaction term or condition, provided compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.

(iii) This paragraph (d)(1) shall not apply to any transaction in which paragraph (d)(2) of this section applies.

(2) *Payments by persons other than consumer.* If any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

(i) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(ii) No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.

(3) *Affiliates.* For purposes of this paragraph (d), affiliates shall be treated as a single ''person.''

(e) *Prohibition on steering*—(1) *General.* In connection with a consumer credit transaction secured by a dwelling, a loan originator shall not direct or ''steer'' a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest.

(2) *Permissible transactions.* A transaction does not violate paragraph (e)(1) of this section if the consumer is presented with loan options that meet the conditions in paragraph (e)(3) of this section for each type of transaction in which the consumer expressed an interest. For purposes of paragraph (e) of this section, the term ''type of transaction'' refers to whether:

(i) A loan has an annual percentage rate that cannot increase after consummation;

(ii) A loan has an annual percentage rate that may increase after consummation; or

(iii) A loan is a reverse mortgage.

(3) *Loan options presented.* A transaction satisfies paragraph (e)(2) of this section only if the loan originator presents the loan options required by that paragraph and all of the following conditions are met:

(i) The loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business and, for each type of transaction in which the consumer expressed an interest, must present the consumer with loan options that include:

(A) The loan with the lowest interest rate;

(B) The loan with the lowest interest rate without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation; and

(C) The loan with the lowest total dollar amount for origination points or fees and discount points.

(ii) The loan originator must have a good faith belief that the options presented to the consumer pursuant to paragraph (e)(3)(i) of this section are loans for which the consumer likely qualifies.

(iii) For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in paragraph (e)(3)(i) of this section.

(4) *Number of loan options presented.* The loan originator can present fewer than three loans and satisfy paragraphs (e)(2) and (e)(3)(i) of this section if the loan(s) presented to the consumer satisfy the criteria of the options in paragraph (e)(3)(i) of this section and the provisions of paragraph (e)(3) of this section are otherwise met.

(f) This section does not apply to a home-equity line of credit subject to §226.5b. Section 226.36(d) and (e) do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

[73 FR 44604, July 30, 2008, as amended at 75 FR 58533, Sept. 24, 2010]

§§ 226.37–226.38 [Reserved]

§ 226.39 Mortgage transfer disclosures.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A ''*covered person*'' means any person, as defined in §226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation.

(2) A ''*mortgage loan*'' means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, each covered person is subject to the requirements of this section and shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the date of transfer.

(1) *Form of disclosures.* The disclosures required by this section shall be provided clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(2) *The date of transfer.* For purposes of this section, the date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party.

(3) *Multiple consumers.* If more than one consumer is liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(4) *Multiple transfers.* If a mortgage loan is acquired by a covered person and subsequently sold, assigned, or otherwise transferred to another covered person, a single disclosure may be provided on behalf of both covered persons if the disclosure satisfies the timing and content requirements applicable to each covered person.

(5) *Multiple covered persons.* If an acquisition involves multiple covered